



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Examiner:  
HARRY W. EBERLE, III : BRUCE A. LEV  
Serial No.: 09/186,741 : Group Art Unit: 3634  
Filing Date: November 5, 1998 : Attorney Docket Number:  
For: ANCHORING BISCUIT DEVICE : HWE-105C

Honorable Commissioner of Patents and Trademarks  
Washington, DC 20231

DECLARATION UNDER RULE 1.132 OF HARRY W. EBERLE, III

I, Harry W. Eberle, III, am the inventor in the above application, and wish to state as follows:

1. I have been involved in the construction industry for more than 5 years as owner of Eberle Builders, Inc. and related companies and my family has been in the hardware business for decades. I have travelled around the country promoting my new product "EB•TY" which is the product covered by the above identified patent application.

2. I have reviewed and am familiar with the Office Action dated August 19, 1999 in the above case as well as the prior art references cited therein.

3. All of the claims in the above case have been rejected on prior art and this prior art describes products which do not utilize the same physical structure as my

invention, are not used for the same purpose and do not achieve the same results. Nonetheless, it is hoped that the newly submitted claims clarify the significant differences between Ellinwood and the German cited Patent on the one hand, and the present invention on the other hand. Neither of these references relate in anyway to biscuit shaped products. In support of a clearer understanding of biscuits in the carpentry field, I enclose an article entitled "Slot Machines - Biscuit Joiners Make Ordinary Guys Look Good" from the March/April 1998 issue of This Old House, pages 31 through 36 and especially page 33. These biscuits are consistent with the original definition set forth in my application as originally filed and as now specified in the new claims.

4. In addition, I am enclosing a copy of a video tape entitled "EB•TY® 1-800-GET-EBTY" and labeled "Glynn and Malgran, P.C., One Route 12 West, Plaza One, Suite 201, Flemington, New Jersey 08822; U.S. Serial No. 09/186,741" and a copy of another video tape entitled "Men in Toolbelts-Deck" and labeled "Glynn and Malgran, P.C., One Route 12 West, Plaza One, Suite 201, Flemington, New Jersey 08822; U.S. Serial No. 09/186,741". These will illustrate more vividly for the Examiner exactly how the invention works.

5. While I could state that my invention is better than all the others, that would be subjective. As objective evidence to overcome any presumption of obviousness I wish to add the following to this Declaration:

a.) My invention has been so widely accepted in the field of carpentry and especially in deck building that more than 20 publications have written articles. Enclosed are copies of the following articles which are submitted as examples:

1. "Tools and Materials", Fine Homebuilding, March 1998, No. 114, Pages 132 through 134;
2. "Almost Invisible", Building Products, May/June 1998, Page 141;
3. "Innovative Tools and Materials", Journal of Light Construction, July 1998, Page 39;
4. "Construction Innovation Awards", CBTC Expo Program Guide, October 23 and 24, 1998, two pages; and,
5. "Decks for Decades", Garden, Deck and Landscape, Fall 1998, Page 34 through 39.

b.) Not only has this invention been widely accepted and proclaimed and published, but it has received the coveted Construction Innovation Award from The Journal of Light Construction and as evidence of that enclosed is the 1998 Award Certificate.

c.) In addition to the foregoing, I can attest to the fact that not only have I never seen anything close to my invention in the marketplace, but I have experienced the commercial success of selling more than 2,800,000 "EB•TYs"

in the first two years since its introduction. I have been able to do this without any significant marketing or advertising funds and without any pre-existing sales force, but predominantly as a result of the cost effectiveness, the technical ease of application, the aesthetics resulting from hidden joints and the long needed alternative workable products to nailing or screwing deck tops with exposed screws and or popping nails.

6. In summary, my product which is clearly covered by the current claims in my pending patent application has had surprising commercial success and satisfies a long felt need in the industry. This is evidenced not only by my actual sales results which only my son and I have been handling, but is further evidenced by the enclosures submitted herewith.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willfully false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code, and that such willfully false statements may jeopardize the validity of the application or any patent issuing thereon.

Date:

11/14/99

  
Harry W. Eberle, III

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Enclosures

Via Express Mail RRR No. EE856558083US